

City of Las Vegas

AGENDA MEMO

CITY COUNCIL MEETING DATE: AUGUST 5, 2009

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: DIR-34955 – APPLICANT/OWNER: KAG PROPERTY, LLC

**** CONDITIONS ****

STAFF RECOMMENDATION: APPROVAL

DRAFT

**** STAFF REPORT ****

APPLICATION REQUEST

This request is for approval of a development report as required by Subsection 9.01 of a development agreement (“Agreement”) entered into between Kyle Acquisition Group, LLC and the city of Las Vegas dated August 8, 2007, on approximately 1,712 acres generally located at the southwest corner of Fort Apache Road and Moccasin Road.

EXECUTIVE SUMMARY

The Master Developer has complied with Subsection 9.01 of the Development Agreement by submitting an annual development report that meets the agreed deadline and includes within the report in a thorough and accurate manner the specific information required by Subsection 9.01.

Analysis of the Agreement shows that the Master Developer is not in compliance with several terms of the Agreement. These items are listed in the table below. The Master Developer is currently in compliance with all other agreed requirements.

Items in the Development Agreement currently in noncompliance status

Master Developer Requirement	Noncompliance Date	DA Reference
Submittal of draft phasing schedule for development of the Community	08/08/07	3.02(b)
Construction of Indian Hills Park	09/17/08	3.02(e); 6.01; Park Agreement (1), (5e), (7); Exhibit C
Submittal of Kyle Canyon Town Center standards	02/08/09	3.21(a)
Payment to city of \$1 million toward construction of fire station	02/08/09	5.02(a)

Additionally, the Master Developer has not completed all of the steps necessary to record the Kyle Canyon Gateway Parent Final Map. However, per state statute, up to two years may elapse from the approval date of the Tentative Map before the Final Map must record, or else the Tentative Map will expire. This deadline to record is 12/20/09.

The Master Developer is working with the city to address the issues of noncompliance. Per the development report, the Master Developer has committed to submitting a strategic analysis report to the city by September 30, 2009 that will recommend new actions with regard to land use on the Kyle Canyon property.

As this development report meets the requirements of Subsection 9.01, and the Master Developer has made diligent efforts to work with the city to address issues of noncompliance and the future development of the property, staff recommends approval of this review.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
12/01/04	The City Council approved a Resolution (R-176-2004) adopting guidelines for development within the Kyle Canyon Gateway area.
11/16/05	The City Council approved a request (GPA-9458) to amend the Land Use Element of the Las Vegas 2020 Master Plan to add the Traditional Neighborhood Development (TND) land use designation. The Planning Commission and staff recommended approval.
01/18/06	The City Council approved a request (GPA-9167) to amend a portion of the Centennial Hills Sector Plan of the General Plan to change land use designations from PCD (Planned Community Development), SC (Service Commercial) and PF (Public Facilities) to TND (Traditional Neighborhood Development) on 1,712 acres generally located north of Grand Teton Drive, between Puli Road and Fort Apache Road. The Planning Commission and staff recommended approval.
05/16/07	The City Council approved a request to amend the Master Plan of Streets and Highways (MSH-21013) to select the Northern Alternative Freeway/Expressway Alignment for Sheep Mountain Parkway and to remove the Southern Alternative Freeway/Expressway Alignment from the Master Plan of Streets and Highways. The Planning Commission and staff recommended approval.
05/16/07	The City Council approved a Development Agreement (DIR-21605) between Kyle Acquisition Group, LLC and the city of Las Vegas on 1,712 acres at the southwest corner of Fort Apache Road and Moccasin Road for the development of the Kyle Canyon Master Plan. The Planning Commission and staff recommended approval. In a related item, the City Council voted to approve a Parks Agreement between Kyle Acquisition Group, LLC and the city of Las Vegas. Staff recommended approval.
05/16/07	The City Council approved a request for a Rezoning (ZON-20543) from U (Undeveloped) [TND (Traditional Neighborhood Development) General Plan Designation] and R-E (Residence Estates) to T-D (Traditional Development) on 1,712 acres at the southwest corner of Fort Apache Road and Moccasin Road. The Kyle Canyon Development Standards and Design Guidelines were approved as part of this action. The Planning Commission and staff recommended approval.
06/20/07	The City Council adopted Ordinance No. 5910, thereby adopting the Development Agreement between Kyle Acquisition Group, LLC and the city of Las Vegas.
08/08/07	The Development Agreement between Kyle Acquisition Group, LLC and the city of Las Vegas was recorded in the Office of the County Recorder. The approved Parks Agreement was recorded together with the Development Agreement. This is the Effective Date of the Development Agreement.

08/15/07	The City Council approved a Major Modification (MOD-22589) of the Kyle Canyon Development Standards and Design Guidelines to realign Iron Mountain Road between Hualapai and Grand Canyon Drive, and to add street cross sections. The Planning Commission and staff recommended approval.
08/15/07	The City Council approved a parent Tentative Map (TMP-22586) for a 213-lot mixed use subdivision on the Community property. The Planning Commission and staff recommended approval. This map was expunged by TMP-25492.
09/05/07	The City Council approved a Petition to Annex (ANX-21949) 15.56 acres generally located on the south side of Kyle Canyon Road, approximately 1,030 feet east of Shaumber Road; and a Petition to Annex (ANX-21950) 5.15 acres generally located on the south side of Kyle Canyon Road, east of Alpine Ridge Way. The Planning Commission and staff recommended approval. The effective date of the annexations was 09/14/07.
09/19/07	The City Council approved a request (GPA-20469) to amend the Centennial Hills Sector Plan of the General Plan to change land use designations from PCD (Planned Community Development) and SC (Service Commercial) to TND (Traditional Neighborhood Development) on 7.27 acres on the west side of Oso Blanca Road, approximately 2,190 feet south of Kyle Canyon Road. The City Council also approved a Rezoning (ZON-22351) from U (Undeveloped) [PCD (Planned Community Development) General Plan Designation], C-1 (Limited Commercial) and C-2 (General Commercial) to T-D (Traditional Development) on the same 7.27 acres. This action also updated the Kyle Canyon Development Standards and Design Guidelines. The Planning Commission and staff recommended approval.
09/19/07	The City Council approved a request (ZON-20475) to establish a Gaming Enterprise Overlay District on 51.38 acres at the southeast corner of Hualapai Way and Oso Blanca Road. The City Council also approved a Special Use Permit (SUP-20478) for a Non-Restricted Gaming use on this site. The Planning Commission and staff recommended approval.
10/23/07	Staff completed the first Final Map Technical Review for the Kyle Canyon Gateway Parent Final Map (FMP-24541) and conducted a workshop pursuant to Subsection 3.05(c)(ii) of the Agreement to discuss comments with the Master Developer. The Final Map was deemed not to be in substantial compliance with the approved parent Tentative Map (TMP-22586). Staff and the Master Developer agreed to retain the Final Map and have the Master Developer submit a new Tentative Map that matched the Final Map. The Final Map would be subject to a subsequent review once the Tentative Map was approved.
12/20/07	The Planning Commission approved a parent Tentative Map (TMP-25492) for a 105-lot mixed-use subdivision on the 1,712-acre Community property. Staff recommended approval.

01/31/08	Planning and Development and Public Works Department staff conditionally approved a Final Map Technical Review for the Kyle Canyon Gateway Parent Final Map (FMP-24541). As of 07/06/09, Final Map mylars based on the current Tentative Map have not been submitted for staff review.
02/06/08	The City Council approved a request (MSH-25695) to amend the Master Plan of Streets and Highways to rename Horse Drive west of Grand Canyon Drive to Kyle Heights Parkway; to realign a portion of the Iron Mountain Road alignment between Horse Drive and the Northern Beltway; to reclassify various streets as identified by the special design designations adopted as part of the Kyle Canyon Development Standards and Design Guidelines; and to add or remove various roadway segments. The Planning Commission and staff recommended approval. The City Council also approved a Major Modification (MOD-25875) of the Kyle Canyon Development Standards and Design Guidelines to amend various street names and to clarify street cross section drawings within the Community. A subsequent Street Name Change application will be required prior to issuance of the first residential permit in the Community. The Planning Commission and staff recommended approval.
02/06/08	The City Council tabled a Petition to Vacate a BLM right-of-way grant generally located north of Grand Teton Drive, south of Moccasin Road, between Puli Road and Fort Apache Road (VAC-23811). The area to be vacated was the original alignment of Sheep Mountain Parkway. The Planning Commission and staff had recommended approval. The Petition cannot record until "Section 1 Land," "Providence Land," and "On-Property Land" are dedicated to the city for creation of the right-of-way for the northern alignment of Sheep Mountain Parkway, pursuant to Subsection 7.05(a)(v) of the Agreement.
08/06/08	The City Council approved a required review (DIR-28767) of a development report pursuant to Subsection 9.01 of the Kyle Canyon Development Agreement. Staff recommended approval. A condition of approval required a follow-up review on 10/01/08.
09/23/08	Wachovia Bank, National Association, acting as the managing creditor of 41 creditors, foreclosed on the Kyle Canyon property. A new entity called KAG Property, LLC was formed to assume ownership of the Kyle Canyon property.
12/03/08	The City Council approved a follow-up required review (DIR-29916) of a development report pursuant to Subsection 9.01 of the Kyle Canyon Development Agreement between the city of Las Vegas and Kyle Acquisition Group, LLC (abeyed from 10/01/08). Staff recommended approval.
02/02/09	Notice of Noncompliance and Opportunity to Cure was sent to KAG Property, LLC for failure to commence construction of Indian Hills Park prior to 09/13/08.

04/17/09	Notice of Noncompliance and Opportunity to Cure was sent to KAG Property, LLC for failure to pay \$1,000,000 to the city towards the construction of a fire station prior to the stated deadline within 18 months of the Effective Date; failure to submit development standards for the Town Center and Urban Mixed Use land use categories within 18 months of the Effective Date; and failure to submit a draft phasing schedule to the city for development of the Community.
06/01/09	The Master Developer and its representatives met with the city to discuss future actions regarding the Kyle Canyon property.
09/30/09	The Master Developer has committed to submitting to the city a report from Hart Howerton Strategic Planning Consultants that will present a strategic plan and recommendations for development of the Kyle Canyon property.

DEVELOPMENT AGREEMENT COMPLIANCE

The information below reflects the extent of compliance with the Development Agreement by the Owner/Master Developer as of July 2009. This information is provided to the Master Developer for inclusion within its annual development report. While the list of items in the development report is similar to this information, the list below is a more complete statement of compliance with the Development Agreement. The tables below are organized into the following categories:

- Table 1: Review requirements
- Table 2: Land use and maintenance requirements
- Table 3A: Infrastructure requirements - general
- Table 3B: Infrastructure requirements (per phasing schedule)
- Table 4: Public facility requirements
- Table 5A: Park and trail requirements – development and review
- Table 5B: Park and trail requirements – facilities
- Table 6: Transportation improvement requirements

Table 1: REVIEW REQUIREMENTS				
CATEGORY	REFERENCE	PERFORMANCE REQUIREMENT	PROGRESS	STATUS
Number of residential units approved	DA 3.01(a), 9.01; DG 3.3	Maximum of 16,000 possible residential units	No units approved	In compliance
Number of residential units built	DA 9.01	N/A	No residential permits issued	In compliance
Overall density	DA 3.01(c)	9.35 dwelling units/acre maximum	0.00 units per acre as currently entitled	In compliance
Anticipated Phases of development for the next calendar year	DA 3.02	Develop per Master Development Plan Phasing Plan	Anticipated that no development will occur in 2009 or 2010	In compliance. Current phasing plan is not time sensitive

Table 2: LAND USE AND MAINTENANCE REQUIREMENTS

CATEGORY	DESCRIPTION	DATE APPROVED	OWNER ACTION	CITY ACTION	REFERENCE	STATUS
General Plan Amendment	TND District	01/18/06 CC; 09/19/07 CC	Submit application for General Plan Amendment for Project Area	Process in conformance with Title 19. Amend Centennial Hills Land Use Plan	DA 3.05(a), 3.18	Completed. Centennial Hills Land Use Plan of General Plan updated
Rezoning	T-D District	05/16/07 CC; 09/19/07 CC	Submit application for Rezoning of Project Area	Process in conformance with Title 19. Amend zoning map	DA 3.05(b)	Completed
Gaming Enterprise Overlay District	155,000 SF (portion of 51.37 acres)	09/19/07 CC	Comply with NRS requirements	Ensure compliance with NRS	DA 3.05(c)(vi)	Completed
Hotel/Casino	155,000 SF	09/19/07 CC; expires 09/19/09	Submit applications for Special Use Permit for non-restricted gaming and Site Development Plan Review for Hotel/Casino	Process applications in conformance with Title 19	DA 3.05(c)(iv-vi)	SUP approved. SDR not yet submitted
Parent Tentative Map	110 pods on 1,712 acres	12/20/07 PC; expires 12/20/09	Submit application for Parent Tentative Map	Process application in conformance with Title 18 and schedule hearing	DA 3.05(c)(i)	Completed
Parent Final Map	110 pods on 1,712 acres	2nd FMTR approved 01/31/08 (Admin)	Submit and record Parent Final Map according to scheduled time limitations	Provide summary of comments to Builder; schedule workshop with Builder within 10 days of FMTR approval.	DA 3.05(c)(ii)	City in compliance. Final Map not recorded. 1st FMTR approved 10/23/07; workshop held 10/23/07.
Kyle Canyon Town Center Standards	Requirement for development of the Town Center and Urban Mixed Use land use districts	Not complete	Submit standards no later than 02/08/09 or issuance of 3,500th residential building permit, whichever is earlier	Process application and schedule hearing for recommendation	DA 3.21(a)	Not in compliance

Master Homeowners' Association	Maintenance of sidewalks, common areas and landscaping within ROW	Not complete	Organize Master HOA at time of Parent Final Map recordation	None	DA 4.01(a)	Not complete. Parent Final Map not recorded
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Table 3A: INFRASTRUCTURE REQUIREMENTS					
FACILITY	OWNER ACTION	CITY ACTION	REFERENCE	PROGRESS	STATUS
Development Phasing Schedule	Submit a draft phasing schedule to city prior to the Effective Date	None	DA 3.02(b)	Not completed	Not in compliance. A separate general phasing map is included in the DA Appendix.
Telecommunications	Within six months of recordation of parent final map, submit a Telecommunications Facilities Map to indicate location of facilities	Staff review, with Planning Commission and City Council hearings	DA 3.13(b)	No action. Parent final map has not been recorded.	N/A (Compliance cannot be determined until after Final Map has recorded.)
Optical Fiber in ROW	Negotiate phasing plan agreement with city and pay designated fees	Permit installation of optical fiber within city ROW as agreed	DA 3.14	Agreement not submitted to city	N/A (Compliance cannot be determined until after Final Map has recorded.)
Flood Control	Within 60 days of completion of the first temporary detention basin, deposit \$100,000 into special account to reimburse city's costs to maintain basins	Maintain all permanent flood control facilities as identified on the CCRFCD Master Plan Update. Maintain all temporary detention basins identified in the Master Drainage Study	DA 4.04	No facilities constructed to date	In compliance
Street Improvement Phasing	Submit a phasing plan and estimated sequence for all required on-property and off-property street improvements as a part of the Master Traffic Study	None	DA 7.04(d)	Completed—Master Traffic Study approved 04/24/07, subject to more detailed studies as development occurs.	In Compliance. Phasing included as part of traffic study

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Drainage Improvement Phasing	Submit a phasing and sequencing plan for all drainage improvements within the Community as a part of the Master Drainage Plan	None	DA 7.07(e)	Completed— Master Drainage Plan conditionally approved 03/29/07; 1st update approved 08/14/07; 2nd update approved 01/31/08.	In Compliance. Contains sequencing plan for general drainage improvements, but not for each pod.
Sheep Mountain Parkway (Dedication of Northern Alignment ROW)	Dedicate Section 1 Land and Providence Land to city prior to recordation of Parent final map	None	DA 7.05(a)(i), (ii)	Not complete	In compliance. Status of completion affects other terms of Agreement
Sheep Mountain Parkway (Vacation of Southern Alignment ROW)	None	By 09/07/07, file action to vacate existing ROW	DA 7.05(a)(iv)	City filed VAC-23811 on 08/09/07. City Council tabled item on 02/06/08, pending results of EIS and Owner decision whether to dedicate land needed for Parkway.	City in compliance. Vacation is contingent on Owner dedication of land for Northern Alignment
Kyle Canyon Interchange	Pay city \$10 million for construction within 60 days of notification from city that design is complete	Complete construction of the Kyle Canyon/U.S. 95 interchange within 48 months of design agreement	DA 7.06(a)	Design not complete. Awaiting RTC traffic forecasts and NDOT environmental assessment before design decision is made	Deadline has not been reached
Horse Drive Interchange	None	Complete construction of Horse Drive/U.S. 95 interchange by 02/08/10	DA 7.06(b)	Notice to proceed construction 06/08/09	In compliance
Special Improvement District	Request formation of SID (optional)	Process application and hold City Council hearing	DA 8.01	Application not filed	In compliance (not time-sensitive)

Table 3B: INFRASTRUCTURE REQUIREMENTS (PHASING SCHEDULE)					
FACILITY	OWNER ACTION	CITY ACTION	REFERENCE	PROGRESS	STATUS
Access to Developer Builder Parcels	Pave two lanes of the main access to any specific Designated Builder Parcel (DBP)	None	DA 3.02(c)	No action. Parent final map has not been recorded.	N/A (Compliance cannot be determined until after Final Map has recorded.)
Sewer Connection	Provide a working sanitary sewer connection prior to final inspection of any dwelling units within a DBP	None	DA 3.02(c)	No permits issued to date. Offsite site design approval pending	N/A (Compliance cannot be determined until after Final Map has recorded.)
Village Streets (Construction)	Construct permanent improvements to all major access Village Streets prior to issuance of building permits beyond 50% of all units within a DBP	Provide status of number of residential permits to Master Developer or Designated Builder	DA 3.02(c)	No permits issued to date	N/A (Compliance cannot be determined until after Final Map has recorded.)
Village Streets (Completion)	Substantially complete all Village Streets within 24 months of start of construction	None	DA 3.02(c)	Street construction not commenced. Parent final map has not been recorded.	N/A (Compliance cannot be determined until after Final Map has recorded.)
Offsite Improvements	Substantially construct offsites adjacent to DBPs prior to issuance of building permits beyond 75% of all units within the DBP	Provide status of number of residential permits to Master Developer or Designated Builder	DA 3.02(c)	No permits issued to date	N/A (Compliance cannot be determined until after Final Map has recorded.)
Landscaping	Complete all required landscaping on streets adjacent to DBPs within two months of the final inspection of the final unit within the DBP	None	DA 3.02(c)	No permits issued to date	N/A (Compliance cannot be determined until after Final Map has recorded.)

Table 4: PUBLIC FACILITY REQUIREMENTS					
FACILITY/ LOCATION	OWNER ACTION	CITY ACTION	REFERENCE	PROGRESS	STATUS
Fire Station (SW corner of Grand Teton Drive and Hualapai Way)	By 02/08/09, pay city \$1 million towards construction of station	None	DA 5.02(a)	Payment has not been made	Not in compliance
Fire Safe Community Program (FSCP)	Within 90 days of city sending written notice that city has established the FSCP, pay city \$50,000 towards cost of city's obligations pursuant to the Agreement	By 11/06/07, establish and promote a FSCP	DA 5.02(d)	Draft resolution to establish program on hold until future of community decided	City has not established program. Payment due 90 days after program is established.
Police Services (Location TBA)	Pay city \$218 per residential unit towards construction of Metro substation	None	DA 5.04	No residential permits issued to date	N/A (No permits may be obtained until Parent Final Map records)
School Improvements	Dedicate to CCSD up to 72 total acres for school sites shown on Master Land Use Plan.	None	DA 5.01	Land not dedicated	In compliance (Not time-sensitive)
Regional Transportation Center (Location TBA)	Dedicate to RTC up to 2.5 gross acres for a transit hub.	None	DA 5.03(a)	Land not dedicated	In compliance (Not-time sensitive)

Table 5A: PARK AND TRAIL REQUIREMENTS – Development and Review						
FACILITY	PERFORMANCE REQUIREMENT	OWNER ACTION	CITY ACTION	AGREEMENT REFERENCE	PROGRESS	STATUS
HOA Park Development	Begin construction of HOA parks within 90 days of city final plan approval. Complete HOA parks within 18 months of start of construction	Construct parks and dedicate to the city or Master HOA as specified in Park Agreement	Accept parks in lieu of residential construction tax up to a maximum of 16,000 units	PA 1, 5D, 6; Exhibit C	No parks under construction or completed	In compliance

Park Area Review	Submit conceptual plan prior to issuance of 500th residential permit within each Park Area	Submit conceptual plan for all parks located within specific Park Areas	Review conceptual plans and actual construction drawings; notify Developer when 400th permit is issued in each Park Area	PA 2, 5B, 5C; Exhibit D	Trigger for commencement of construction not reached	In compliance
Park Plans	Prepare 90% construction drawings/specs for all parks no later than 180 days following city approval of conceptual plans. Submit 100% drawings within 90 days of city completion of 90% plan review.	Design park plans as specified on conceptual plan	Review and comment on park plans	PA 3, 5C; Exhibit C	No parks under construction or completed	In compliance

Table 5B: PARK AND TRAIL REQUIREMENTS - Facilities

FACILITY	PERFORMANCE REQUIREMENT	OWNER ACTION	CITY ACTION	AGREEMENT REFERENCE	PROGRESS	STATUS
Indian Hills Park (11.31 acres)	Begin construction within 180 days of confirmation from city that plans are sufficient to acquire permits and that adequate flood control facilities are in place.	Construct park and dedicate all amenities to city. Begin construction by 09/17/08. Complete park by 03/17/10.	Accept parks in lieu of residential construction tax; begin maintenance within 30 days of park completion	PA 1, 5E, 7; Exhibit C	Park not under construction. Flood control facilities confirmed 02/27/08; 100% design plans complete—delivered to Focus 03/17/08. MOU between city and CCSD for infrastructure approved 06/04/08 CC	Not in compliance
Iron Mountain Park (9.77 acres)	Begin construction within 180 days of confirmation from city that 7,000th residential permit has been issued and that adequate flood control facilities are in place.	Construct park and dedicate all amenities to city	Accept parks in lieu of residential construction tax; begin maintenance within 30 days of park completion	PA 1, 5F, 7; Exhibit C	Trigger for commencement of construction not reached	In compliance

Moccasin Park (15.67 acres)	Begin construction within 90 days of city final approval. Complete park within 18 months of commencement of construction.	Construct park and dedicate both land and amenities to the city	Accept parks in lieu of residential construction tax; begin maintenance within 30 days of park completion	PA 1, 7; Exhibit C	Construction not commenced	In compliance
Paseos (7.6 acres)	Begin construction within 90 days of city final approval. Complete within 18 months of commencement of construction.	Construct landscaping, open space and trails and dedicate to the Master HOA	Accept parks in lieu of residential construction tax	PA 1; Exhibit C	Construction not commenced	In compliance
Arroyos (50.6 acres gross, 21.6 acres improved)	Begin construction within 90 days of city final approval. Complete within 18 months of commencement of construction.	Construct landscaping, open space and trails and dedicate to the Master HOA	Accept parks in lieu of residential construction tax	PA 1; Exhibit C	Construction not commenced	In compliance
Community Centers (5 total)	Construct at park sites	Construct community centers; dedicate to the city or Master HOA as specified in Parks Agreement	Accept parks in lieu of residential construction tax	PA 1; Exhibit C	Construction not commenced	In compliance

Table 6: TRANSPORTATION IMPROVEMENT REQUIREMENTS

CATEGORY	REFERENCE	PERFORMANCE REQUIREMENT	PROGRESS	STATUS
Traffic Improvements	DA 7.04(a); 3.02(c)	Design and construct all Village Streets as indicated in Master Traffic Study	No Village Streets completed or under construction at this time	In compliance
Traffic Signal Improvements	DA 7.04(b)	Construct all signals identified in Master Traffic Study	No traffic signals completed or under construction at this time	In compliance

ANALYSIS

In accordance with Subsection 9.01 of the Agreement, the Owner/Master Developer is required to submit an annual report documenting the extent of the Master Developer's and the city's material compliance with the terms of the Agreement during the preceding review period, in this case from August 2008 to the present. NRS 278.0205 requires a review of the development of the community for which this report summarizes. The next review period will end in August 2010.

In September 2008, Wachovia Bank, acting as managing creditor of 41 creditors, foreclosed on the Kyle Canyon property. A new entity called KAG Property, LLC (“Master Developer”) was formed to assume ownership of the Kyle Canyon property. In February 2009 and April 2009, notices of Noncompliance and Opportunity to Cure were sent by the city to the Master Developer, pursuant to Subsection 10.01 of the Agreement. Also under this section, the two parties agreed to allow for a six month period beginning 04/01/09 for the Master Developer to cure the items of noncompliance. It is expected that by the end of the six-month period the Master Developer will have developed a strategic plan that will address the items of noncompliance and the future development of the Kyle Canyon property.

Subsection 9.01 of the Agreement requires the development report to include, without limitation, (a) data showing the total number of residential units built and approved on the date of the report; (b) specific densities within each subdivision and within the Community as a whole; and (c) the status of development within the Community and the anticipated phases of development for the next calendar year. The Master Developer’s representative, Winchester Carlisle Real Estate Partners, has prepared the development report for this review.

- Residential Units

Table 1 above shows progress made in planning and construction of residential units in the Project Area. Of the 16,000 residential units of all types allowed within the Community, none have been approved or built. Building permits cannot be issued until such time as the Parent Final Map records and individual lots are subsequently platted.

- Densities

The overall maximum density of the Project Area is determined by dividing the maximum number of units (16,000) by the overall Project Area (1,712 acres). As there are no residential units built at this time and no individual subdivisions within the Project Area, the current overall density is zero units per acre and no breakdown of specific densities across the Project Area is possible. Table 1 summarizes this information.

- Anticipated Status of Development

Table 1 indicates that the Master Developer does not expect any development to occur in 2009 or 2010. Within the next 12 months, a conceptual land use plan will be drafted and submitted for the city to review.

Other Terms of the Agreement

Tables 2 through 6 show the extent of compliance with the major terms of the Agreement. In many cases, compliance cannot be determined at this time, as action is contingent upon recordation of the Parent Final Map. The Parent Final Map cannot record until all staff comments have been addressed and until such time as the lands referred to in the Agreement as the "Section 1 Land" and "Providence Land" have been dedicated to the city for the proposed northern Sheep Mountain Parkway right-of-way alignment. The Agreement itself does not set time limitations on recordation of final maps; rather, NRS 278.360 through 460 governs the requirements of state law concerning final maps. Under these requirements, the Parent Tentative Map will expire 12/20/09, or two years after it was first approved, if the Parent Final Map does not record. If the Section 1 and Providence lands are not ultimately dedicated, the Agreement must be amended to alter the Master Land Use Plan to include the existing diagonal Sheep Mountain Parkway right-of-way, pursuant to Subsection 7.05(a) of the Agreement. At present, no lands have been dedicated to the city. The Master Developer is considering the option of using the existing right-of-way, which would not require additional property acquisition.

A Master Traffic Study and Master Drainage Study have been completed. More detailed studies will be reviewed as development occurs. Two updates to the Master Drainage Study have been approved. Phasing and sequencing for street improvements were included with the Master Traffic Study.

Public Services development progress is indicated by Table 4. In the case of schools and the proposed Regional Transportation Center, the Master Developer must first dedicate land to the Regional Transportation Commission of Southern Nevada and to the Clark County School District before development can occur. The Master Developer is required to partially fund construction of a proposed fire station at the southwest corner of Grand Teton Drive and Hualapai Way. A police substation is expected to be constructed as the Project Area develops; however, a location has not been determined, and sites outside of the Project Area have been discussed. Per Subsection 5.02(d) of the Agreement, the city was to establish and promote a Fire Safe Community Program by November 2007, to which the Master Developer would contribute funding for implementation; however, the draft of that program was put on hold based on the uncertainty of development of the Project Area.

Tables 5A and 5B show the extent of compliance with the terms of the Parks Agreement, which accompanied the Development Agreement for the Kyle Canyon Project Area. No parks have as yet been constructed.

FINDINGS

The development report submitted by the Master Developer complies with all Subsection 9.01 requirements and therefore approval of the required review is recommended.

The Master Developer is unable to meet the Kyle Canyon Development Agreement terms under the current northern Sheep Mountain Parkway alignment. As a result, several items in the Agreement are in noncompliance status. Because of its potential to disrupt land use and street layout patterns, the ultimate location of the Sheep Mountain Parkway alignment will determine the future of the land use plan for Kyle Canyon. The city is working with the Master Developer on a solution beneficial to both parties. In June 2009 the Master Developer retained the services of an independent consultant to determine the highest and best uses for Kyle Canyon given the current economic situation. A summary report that will take into account the constraints of the area, concerns of neighbors and the market situation is expected to be completed by September 30, 2009 and submitted to the Master Developer and city. The recommendations will continue to maintain an integrated vision for the property in line with the city's approved Kyle Canyon resolution (R-176-2004).

Pursuant to Section 10.01 of the Agreement, the parties agreed to an extension of time for the Master Developer to cure all outstanding issues of noncompliance. This extension period began 04/01/09 and ends six months from that day.

Items in the Development Agreement currently in noncompliance status

Master Developer Requirement	Noncompliance Date	DA Reference
Submittal of draft phasing schedule for development of the Community	08/08/07	3.02(b)
Construction of Indian Hills Park	09/17/08	3.02(e); 6.01; Park Agreement (1), (5e), (7); Exhibit C
Submittal of Kyle Canyon Town Center standards	02/08/09	3.21(a)
Payment to city of \$1 million toward construction of fire station	02/08/09	5.02(a)

OUTSTANDING ITEMS REQUIRING COMPLIANCE

For the current review period, the parties shall comply with the following items from the Development Agreement. The parties have agreed to a six-month extension beginning 04/01/09 for the Master Developer to cure the items currently in noncompliance as stated above.

Owner/Master Developer

- Master Developer shall pay \$1,000,000 to city of Las Vegas towards the construction of a fire station at a site located at the southwest corner of Grand Teton Drive and Hualapai Way.
- Submit Kyle Canyon Town Center Standards for city approval.
- Obtain building permits and begin construction of Indian Hills Park, with completion by 03/17/10.
- Submit a draft phasing schedule to city for development of the Master Planned Community
- Dedicate Section 1 and Providence lands to city for development of northern alignment of Sheep Mountain Parkway prior to recordation of Parent Final Map
- Address staff comments from Final Map Technical Review and record Parent Final Map prior to expiration of Parent Tentative Map
- Pay city \$50,000 towards the promotion of a Fire Safe Community Program within 90 days of the city's written confirmation that the program has been established

City of Las Vegas

- Establish and promote a Fire Safe Community Program
- Vacate BLM right-of-way for existing southern alignment of Sheep Mountain Parkway (if Section 1 and Providence lands are dedicated)

NEIGHBORHOOD ASSOCIATIONS NOTIFIED N/A

ASSEMBLY DISTRICT N/A

SENATE DISTRICT N/A

NOTICES MAILED N/A

APPROVALS 0

PROTESTS 0

DRAFT